Supreme Court, U. S.
FILED
MAY 27 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 74-6632

MINOR MOODY,

Petitioner,

—*v.*—

LOREN DAGGETT, Warden,
United States Penitentiary,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JUNE 2, 1975
CERTIORARI GRANTED MARCH 1, 1976

IN THE

Supreme Court of the United States

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COURT OF APPEALS FOR THE TENTH CIRCUIT

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DOCKET ENTRIES

DATE	PROCEEDINGS
1975	
Jan 22	Petition for writ of habeas corpus w/supplement copy to U. S. Attorney $5.00 PAID
Jan 29	MEMORANDUM AND ORDER filed and entered O'Connor—J ORDERED that this action be dismissed. (It is the rule in this Circuit that a parole revocation hearing is not required until the parole violator warrant has been executed. The parole board is under no obligation to execute the warrant inasmuch as petitioner has been in custody on his 1971 manslaughter sentence since the time the warrant was issued and filed as a detainer against him.) copies: petr and U. S. Attorney
Jan 29	Judgment on decision by the court denying relief and dismissing action filed and entered Clerk copies: petr and U. S. Attorney JS 6 card made
Feb 18	Notice of appeal $5.00 PAID copies: petr; Mr. Robert J. Roth, U.S. Atty; Clerk, U.S Court of Appeals, 10th Circuit w/copy of docket entries
Mar 14	Original record on appeal transmitted to Clerk, U.S. Court of Appeals, 10th Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PERSONS IN FEDERAL CUSTODY

Case No. 75-28-C3
(To be supplied by
the Clerk of the
District Court)

[Filed Jan. 22, 1975, Arthur G. Johnson, Clerk
By Elizabeth * * *, Deputy]

[Filing Fee Paid, Arthur G. Johnson, Clerk
By Elizabeth * * *, Deputy]

MINOR MOODY
Full name of petitioner

00901-156
Prison number

vs.

LOREN DAGGETT, Warden
Name of respondent

INSTRUCTIONS—READ CAREFULLY

In order for this petition to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten), signed by the petitioner and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear to which question any such continued answer refers.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should therefore exercise care to assure that all answers are true and correct.

If the petition is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that petitioner will be unable to pay the fees and costs of the habeas corpus proceedings. When the petition is completed, *the original and two copies* shall be mailed to the Clerk of the District Court for the District of Kansas, Topeka, Kansas.

PETITION

1. Place of detention—USP LK

2. Name and location of court which imposed sentence US Dist Ct. Arizona

3. The case number and the offense or offenses for which sentence was imposed:

(a) CR 71-596 Manslaughter 18 USC 115 3, 1112, 111
(b) .....
(c) .....

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 12-6-71 10 years
(b) .....
(c) .....

5. Check whether a finding of guilty was made after a plea of

(a) guilty .....; or
(b) not guilty .....; or
(c) nolo contendere X

6. If you were found guilty after a plea of not guilty, check whether that finding was made by

(a) a jury .....; or
(b) a judge without a jury .....

7. Did you appeal from the judgment of conviction or the imposition of sentence? NO

8. If you answered "yes" to (7), list

(a) the name of each court to which you appealed:

i. .....
ii. .....
iii. .....

(b) the result in each such court to which you appealed and the date of such result:

i. .....
ii. .....
iii. .....

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See Attached
(b)
(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Attached
(b)
(c)

11. Have you filed previous petitions for habeas corpus, motions under Section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction?

NO

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof:

i. .....
ii. .....
iii. .....

(b) the name and location of the court in which each was filed:

i. .....
ii. .....
iii. .....

(c) the disposition thereof and the date of such disposition:

i. .....
ii. .....
iii. .....

(d) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. .....
ii. .....
iii. .....

13. If you did not file a motion under Section 2255 of Title 28, United States Code, or if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

(a) See Attached
(b)
(c)

14. Has any ground set forth in (9) been previously presented to this or any other federal court by way of petition for habeas corpus motion under Section 2255 of Title 28, United States Code, or any other petition, motion or application? NO

15. If you answered "yes" to (14), identify

(a) which grounds have been previously presented:

i. .....
ii. .....
iii. .....

(b) the proceedings in which each ground was raised:

i. .....
ii. .....
iii. .....

16. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of such sentence? .....

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? .....

17. If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you:

i. Public Defender Phoenix, Arizona
ii. .....
iii. .....

(b) the proceedings at which each such attorney represented you:

i. All
ii. .....
iii. .....

(c) was said counsel

i. appointed by the court? X; or
ii. one of your own choosing? .....

18. If your petition is based upon the trial court's refusing you counsel, attach the transcript of the proceedings which supports your allegation.

19. If your petition is based upon the failure of counsel to adequately represent you, state concisely and in detail what counsel failed to do in representing your interests:

(a)

(b)

(c)

20. If you are seeking leave to proceed *in forma pauperis*, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? .....

/s/ Minor Moody
Signature of Petitioner

STATE OF KANSAS)
) ss
COUNTY OF LEAVENWORTH)

I, Minor Moody being first duly sworn under my oath depose and say that I have subscribed to the foregoing petition, that I know the contents thereof; and that the matters and allegations therein set forth are true.

/s/ Minor Moody
Signature of Affiant

SUBSCRIBED AND SWORN to before me this 13 day of Jan., 1974.

/s/ D. B. Self
Notary Public

My commission expires:

_____
(month) (day) (year)

D. B. Tolefree Parole Officer
U.S. Penitentiary
Leavenworth, Kansas 66048
Authorized by Act of July
7, 1955, to Administer
Oaths (18-U.S.C. 4004).

U. S. DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA, KANSAS

No: ———

MINOR MOODY, PETITIONER

v.

LOREN DAGGETT, Warden, RESPONDENT

———

SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS

1. Moody does not attack the present sentence he is serving. There is currently an outstanding parole violation warrant lodged by the U. S. Board of Parole (Board). The warrant concerns a federal sentence imposed on February 12, 1962. Moody served four years and three months on a ten-year sentence and was paroled. When he was arrested and sentenced on the present sentence, the Board lodged a detainer with the Warden.

2. During 1972, Moody asked the Board to execute the detainer warrant. The Board, in a letter dated October 18, 1972, refused to do so, saying:

> "The Board has indicated it intends to take you into custody as a federal parole violator at such time as you are released from the sentence for which you are now confined."

Signed:
James R. Pace
Per: Stanley B. Kruger

ARGUMENT

Under *Morrisey* v. *Brewer*, 408 U.S. 471, prompt parole violation hearings are required. Issuance of a parole violator warrant requires a diligent, good faith attempt to determine the validity of charges outlined in the warrant.

Over three years have elapsed since Moody was sentenced to the custody of the Attorney General. The only remedy for such a delay is dismissal of the warrant. See: *Sutherland* v. *D. C. Board of Parole*, 366 F. Supp. 270 (1973) (D.C.); *Fitzgerald* v. *Sigler*, 372 F. Supp. 890 (D.C.) 1974; *James* v. *Johnston*, 368 F. Supp. 571 (1974) (D.C.).

Respectfully submitted,

/s/ Minor Moody

CERTIFICATE

I do hereby certify, under the penalties of perjury, that all information contained herein is true.

/s/ Minor Moody

Sworn to and subscribed before me this 13 day of January, 1975.

/s/ D. B. Tolefree
D. B. TOLEFREE
Parole Officer
U. S. Penitentiary
Leavenworth, Kansas 66048
Authorized By Act of July 7, 1975 to Administer Oaths (18-U.S.C. 4004).

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

[Filed Jan. 29, 1975, Arthur G. Johnson, Clerk, /s/ [Illegible], Deputy]

Civil Action No. 75-28-C3

MINOR MOODY, PETITIONER

v.

LOREN DAGGETT, Warden, RESPONDENT

MEMORANDUM AND ORDER

Petitioner has filed with the clerk a petition for writ of habeas corpus. Petitioner is presently confined at the United States Penitentiary at Leavenworth, Kansas pursuant to a sentence imposed on December 6, 1971 by the United States District Court for the District of Arizona after a plea of *nolo contendere* to the offense of manslaughter. Petitioner does not attack his present sentence.

Petitioner contends that he has been denied a speedy parole revocation hearing as required by *Morrisey* v. *Brewer*, 408 U.S. 471 (1972). Petitioner acknowledges that on February 12, 1962, he received a ten-year federal sentence for an unstated offense. He served four years and three months on that sentence and was then paroled. Moody further acknowledges that when he was arrested and sentenced on the present sentence, the Board of Parole filed a detainer with the Warden of the United States Penitentiary. The Board has refused to execute the parole violator warrant which is serving as the basis of its detainer. It is the rule in this Circuit that a parole revocation hearing is not required until the parole violator warrant has been executed. The parole board is under no obligation to execute the warrant inasmuch as petitioner has been in custody on his 1971 manslaughter sentence since the time the warrant was issued and filed

as a detainer against him. See *Small* v. *Britton*, 500 F. 2d 299 (10th Cir. 1974), and cases cited therein.

Accordingly,

IT IS ORDERED that this action be dismissed, and that the clerk transmit copies of this Memorandum and Order to the petitioner and the Office of the United States Attorney.

Dated this 27 day of January, 1975, at Kansas City, Kansas.

/s/ Earl E. O'Connor
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Filed Jan. 29, 1975, Arthur G. Johnson, Clerk,
By /s/ [Illegible], Deputy]

Civil Action File No. 75-28-C3

MINOR MOODY, PETITIONER

vs.

LOREN DAGGETT, Warden, RESPONDENT

JUDGMENT

This action came on before the Court, Honorable Earl E. O'Connor, United States District Judge, presiding, and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that all relief be denied and the action be, and it is hereby, dismissed.

Dated at Topeka, Kansas, this 29th day of January, 1975.

Entered in the docket 1-29-75

ARTHUR G. JOHNSON
Clerk of Court

By /s/ [Illegible]
Deputy

IN THE UNITED STATES DISTRICT COURT
TOPEKA, KANSAS

[Filed Feb. 18, 1975, Arthur G. Johnson, Clerk,
By /s/ [Illegible], Deputy]

No. 75-28-C3

MINOR MOODY

vs.

LOREN DAGGETT, Warden

NOTICE OF APPEAL

Take notice that Minor Moody, hereby appeals from the Order of January 29, 1975; to the Court of Appeals.

Five Dollar ($5.00) filing fee follows.

/s/ Minor Moody
MINOR MOODY, Pro se

MARCH TERM—May 7, 1975

Before Honorable Oliver Seth, Honorable Robert H. McWilliams and Honorable James E. Barrett, Circuit Judges

[Filed May 9, 1975, Arthur G. Johnson, Clerk,
By /s/ [Illegible], Deputy]

No. 75-1199

MINOR MOODY, PETITIONER-APPELLANT

vs.

LOREN DAGGETT, Warden, U. S. Penitentiary,
RESPONDENT-APPELLEE

This matter comes on for consideration of Moody's request for leave to proceed in forma pauperis on appeal from a denial of habeas corpus relief by the United States District Court for the District of Kansas.

Moody was paroled from a federal sentence February 12, 1962. He is currently serving a sentence of ten years imposed on December 6, 1971, by the United States District Court for the District of Arizona. The United States Board of Parole has lodged a detainer against Moody based on a parole violator's warrant from his first sentence. The Board plans to execute the warrant when Moody is released from his 1971 sentence. Moody alleges that failure of the Board to execute the warrant and provide him with a parole revocation hearing violates the requirements of Morrissey v. Brewer, 408 U.S. 471 (1972).

Moody's claim is clearly without merit under our holding in Small v. Britton, 500 F.2d 299 (10th Cir. 1974).

Accordingly, leave to proceed in forma pauperis is denied.

/s/ Howard K. Phillips
HOWARD K. PHILLIPS
Clerk

A true copy

Teste

HOWARD K. PHILLIPS
Clerk, U. S. Court of Appeals
Tenth Circuit

/s/ [Illegible]
Deputy Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-6632

MINOR MOODY, PETITIONER

v.

LOREN DAGGETT, Warden

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 1, 1976

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